



THE PERMANENT REPRESENTATIVE  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C.

August 25, 2015

Mr. Emilio Alvarez Icaza  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Bernardo Aban Tercero, Case No. 12.994**  
**U.S. Request to Rescind Merits Report for Failure to Exhaust Remedies**

Dear Mr. Icaza:

The United States acknowledges receipt of the letter from your office, dated today, transmitting final Report No. 51/15, in which the Inter-American Commission on Human Rights (“Commission”) finds various “violations”<sup>1</sup> of the American Declaration of the Rights and Duties of Man (“American Declaration”) and makes several recommendations. The United States respectfully disagrees that this case demonstrates any failure on the part of the United States to live up to its commitments under the American Declaration.

It has come to our attention that yesterday, Petitioner Tercero filed a subsequent application for writ of *habeas corpus* in the Texas courts, asserting he was denied due process because Texas prosecutors allegedly presented false testimony at his trial. Earlier today, the Texas Court of Criminal Appeals granted that application, finding it to meet the threshold procedural requirements for

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<sup>1</sup> As the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on members states of the Organization of American States (OAS), we understand that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the Declaration.

consideration of a subsequent *habeas* application under Texas law. The Court stayed Petitioner's execution, and remanded the case to the trial court to review the merits of the claim. This application thus remains pending and Petitioner is actively pursuing his claims in the trial court, with the prospect thereafter of seeking further available review in the Court of Criminal Appeals.

Petitioner is therefore still exhausting domestic remedies, with the prospect of obtaining effective relief in the domestic system, which renders his petition inadmissible under Article 31 of the Commission's Rules of Procedure.<sup>2</sup> As the United States argued in its brief of August 7, 2015—an argument the Commission addressed only cursorily at paragraph 102 of Report No. 51/15—the Commission has the power to reconsider a prior decision on admissibility, including on non-exhaustion grounds.<sup>3</sup> Furthermore, depending on the outcome of these domestic proceedings, many of the Commission's findings and conclusions in Report No. 51/15 may be rendered inaccurate. The appropriate course of action is for the Commission to rescind Report No. 51/15 in its entirety as prematurely issued, and dismiss this case. Such dismissal would be without prejudice to the Petitioner's ability to file another Petition, with updated facts and allegations, if and when he has satisfied the requirements of Article 31 and the other requirements for the Commission to consider a petition and declare it admissible.

Should the Commission choose instead to leave Report No. 51/15 intact, the United States would request that it be amended at paragraph 158 to clarify that the United States chose not to provide a response to the draft report forwarded to it by the Commission on August 18, 2015. As written, paragraph 158 could be erroneously read to suggest that the United States filed no response at all in this case, when in fact the United States submitted a written response on admissibility and merits on August 7, 2015, in which our position was spelled out in detail.

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<sup>2</sup> See, e.g., *Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States*, Petition No. 478-05, Report No. 78/08 & 78/09, Admissibility, Aug. 5, 2009, ¶ 60 & Decision ¶ 3 (declaring case inadmissible with respect to one petitioner "because the presumed victim is pursuing a civil domestic remedy"); *Cherokee Nation v. United States*, Case No. 11.071, Report No. 6/97, Inadmissibility, Mar. 12, 1997, ¶ 41 (finding petition inadmissible because "[t]here are still available, domestic remedies in the United States to be invoked and exhausted" and accordingly closing the case).

<sup>3</sup> *Tercero v. United States*, Case No. 12.994, Response of the United States of America, Aug. 7, 2015, at 6–9.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, reading "Anthony Pahigian". The signature is written in a cursive style, with the first name "Anthony" and the last name "Pahigian" clearly legible.

Anthony Pahigian  
Acting Interim Permanent Representative